



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPB O FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for breach of an agreement, for other reasons, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation, tenancy agreement, and or an agreement with the Landlord?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

### Background and Evidence

The Tenants affirmed they received the hearing documents however they did not receive copies of the Landlord's evidence.

The parties agreed that the Tenants have occupied the rental unit since 2009 and that they entered into a second fixed term tenancy agreement that began on February 1, 2011. Rent is payable on the first of each month in the amount of \$3,200.00 and on February 18, 2009 the Tenants paid \$1,600.00 as the security deposit and \$1,600.00 as the pet deposit.

The Landlord confirmed that both options for what was to happen at the end of the fixed term of October 31, 2011 were selected on the tenancy agreement. She advised that she had put her residence up for sale and that she had informed the Tenants she wanted to live in the rental unit if her house sold but that she would be willing to continue the tenancy or enter into another agreement if her house did not sell. Her

house has since sold so she wants to take back possession of the rental unit as soon as possible. The purchasers get possession of her house on January 31, 2012.

The Tenants stated that they were under the impression that their tenancy would continue on a month to month basis after October 31, 2011, just as their first agreement had. They stated that their first agreement was completed in the same format with both options selected on what would happen after the end of the fixed term and they believe this new tenancy agreement was simply an amended photocopy of their original agreement.

The Tenants advised they entered into this second agreement in February 2011 and they were not told about the Landlord selling her residence until July 2011. Then on October 14, 2011 they received a call from the Landlord telling them her house had sold and they needed to move no later than December 2011 to allow the Landlord time to renovate the rental unit to be wheelchair accessible. They stated that the Landlord has already had several contractors attend the unit to provide her will information about making the unit more suitable for the Landlord's mother. Then the Landlord requested that they sign a mutual agreement to end the tenancy which they believe is her attempt to get out of paying them the one month's compensation that they are entitled to receive if the Landlord wants the property for her own use.

The Landlord confirmed she wants the property for her mother and her to reside in and that her mother is in a wheelchair. She is of the opinion that the way she completed the tenancy agreement allows her to regain possession of the rental unit when she requests if she chooses not to extend the time period of the tenancy.

### Analysis

The Tenants affirmed they did not get served with copies of the Landlord's evidence which is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the respondent Tenants have not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision. I did however consider the Landlord's testimony.

When applying for an Order of Possession for breach of an agreement, the applicant bears the burden of proof that an agreement between the parties was breached.

Section 6(3)(c) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The evidence supports that the tenancy agreement was completed for a fixed term tenancy which at the end of the fixed term would both i) continue on a month to month basis or another fixed length of time; and ii) the tenancy ends and the tenancy must move out of the residential unit.

After careful consideration of the evidence before me I find the terms of the tenancy agreement to be unclear, therefore in accordance with section 6(3)(c) of the Act they are unenforceable and this tenancy is a month to month tenancy.

If the Landlord wishes to end this tenancy for her own use of the property, the Landlord is at liberty to serve the Tenants with a 2 Month Notice to End Tenancy for landlord's use, on the prescribed form, and provide the Tenants with compensation equal to one month's rent pursuant to sections 49 and 51 of the Act.

As stated in the hearing, I have also included sections 28 and 29 of the Act at the end of this decision.

The Landlord has not been successful with her application, therefore I decline to award recovery of the \$50.00 filing fee.

### Conclusion

I HEREBY DISMISS the Landlord's application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 21, 2011.

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Residential Tenancy Branch

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

